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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8132 of 2017
Date of Decision : 20.11.2017

BABU KHAN

....PETITIONER

VERSUS

AVTAR SINGH AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Shiv Kumar Sharma, Advocate for the petitioner.

B. S. WALIA, JUDGE (ORAL)

[1] Prayer in this revision petition under Article 227 of the Constitution of India, is for setting aside of order dated 01.11.2017 i.e. Annexure P-4 vide which the application for recalling respondent No.1 i.e. PW-4-Avtar Singh has been dismissed.

[2] Brief facts of the case, leading to the filing of the revision petition are that plaintiff-respondent-Avtar Singh had filed a suit against defendant No.6-petitioner as well as defendant Nos.1 to 5 i.e. proforma respondents for possession as owner by way of specific performance of agreement to sell dated 14.07.2011 of two houses as per details given in the title of the plaint i.e. Annexure P-4 and in the alternative suit for recovery of Rs.28,60,000/- i.e. Rs.15,00,000/- earnest money paid by the plaintiff-respondent to the defendant No.1/proforma respondent No.1 at the time of execution to agreement of sell dated 14.07.2011 and writing dated 30.07.2011 and Rs.13,60,000/- as damages together with *pendente*

lite and future interest as also suit for declaration that the alleged agreement to sell dated 30.08.2011 allegedly executed by defendant Nos.4 and 5 i.e. proforma respondent Nos.5 and 6 in favour of defendant No.6 i.e. petitioner herein was illegal, null and void and further suit for permanent prohibitory injunction for restraining defendant No.6 i.e. petitioner herein as well as proforma respondents from alienating by way of sale, mortgage, gift, exchange etc or in any other manner, the suit property duly described in the heading 'A' of the plaint.

[3] Defendant No.6 i.e. petitioner herein and proforma respondents contested the suit filed by the plaintiff/respondent No.1 by filing written statements. In order to prove the case, plaintiff/respondent No.1 examined himself as PW-4, whereafter PW-Amit Kumar and Om Parkash were examined. Thereafter, PW-Malkit Singh was examined-in-chief but his cross-examination was deferred on request of defendant No.6 i.e. petitioner herein. It is also relevant to take note of the fact that the plaintiff i.e. PW-4-Avtar Singh closed his evidence vide order dated 09.08.2017.

[4] Thereafter, defendant No.6 i.e. petitioner herein moved an application i.e. Annexure P-2 dated 05.09.2017 for recalling PW-4 i.e. Avtar Singh, plaintiff by stating that inadvertantly his counsel had not put all relevant and material questions to PW-4 which were necessary for the correct decision by the Court of the learned SDJM, Malerkotla.

[5] Plaintiff-respondent No.1 filed a reply to the application i.e. Annexure P-3 dated 01.11.2017. It is the grievance of the petitioner that the application i.e. Annexure P-2 for recall of plaintiff i.e. PW-4-Avtar

Singh was dismissed vide Order Annexure P-4 dated 01.11.2017 without appreciating that the further cross-examination of PW-4 plaintiff was necessary and in case the same was not allowed, irreparable loss would be occasioned to defendant No.6-petitioner herein, as the petitioner intended to prove the factum of cheating committed by plaintiff-respondent No.1 in connivance with proforma respondent Nos.5 and 6.

[6] A perusal of the impugned order reveals that plaintiff-Avtar Singh (wrongly recorded therein as Sukhdev Singh) was duly cross-examined at length on 21.07.2017. The plaintiff in his statement in the Court admitted complaint having been made against him of his having cheated defendant No.6 i.e. petitioner therein. After taking into account all aspects of the matter, the learned trial Court dismissed the application for recall of PW-4 i.e. plaintiff.

[7] I have considered the submissions made by learned counsel for the petitioner.

[8] Admittedly, the plaintiff was duly cross-examined at length on 21.07.2017. Learned counsel for the petitioner has admitted that in his statement before the Court, the accused i.e. plaintiff/respondent No.1 has admitted complaint having been made against him of his having cheated defendant No.6 i.e. petitioner therein. The application for recall of PW-4 i.e. plaintiff-respondent No.1 was filed when the case was fixed for evidence of defendants. PW-4 i.e. Avtar Singh already stands examined at length. The application i.e. Annexure P-2 which was moved, does not specify the points on which the plaintiff PW-4 was to be further cross-examined. This Court in 'Karam Pal versus Hari Singh @ Dhangad',

2017 (1) PLR 858, while taking note of the decision of this Court in 'Surinder Kaur versus Karanbir Singh', 2004 (3) RCR (Civil) 161 held that the provisions in terms of Order 18 Rule, 17 of the CPC was merely an enabling provisions for the convenience of the Court and the same could not be used by the parties to re-examine any witness to fill-up lacuna in the case and that the power under Order 18, Rule 17 CPC had to be exercised sparingly in exceptional circumstances, that though the Court may at any stage of the suit recall any witness, who had been examined and put such questions to him as the Court thinks fit, however, the provision did not permit a party to re-examine any witness to fill up lacuna in the case and the language of Order 18, Rule 17 CPC, revealed that the same was for the convenience of the Court.

[9] Karampal's case (supra) also referred to the decision of the Hon'ble Supreme Court in 'Ram Ratti versus Mange Ram (deceased) through LRs and others', 2016(2) RCR (Civil) 464, wherein it has been held that recalling of witness for further elaborating on the left out points was wholly impermissible in law and the purpose of Order 18, Rule 17 CPC was very limited and discretionary in nature and said provision could be invoked for the convenience of the Court where the Court required such evidence to be led.

[10] Since the only point on which the application was moved was for further elaboration on the points left out in the cross-examination of PW-4 i.e. plaintiff Avtar Singh, no case is made out for interfering with the order, passed by the learned trial Court.

[11] Accordingly, finding no merit in the revision petition, the same is dismissed *in limine*.

(B. S. WALIA)
JUDGE

November 20, 2017
rajneesh

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No